

SECOND REGULAR SESSION

SENATE BILL NO. 1146

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time February 28, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5373S.01I

AN ACT

To repeal sections 536.010 and 536.100, RSMo, and to enact in lieu thereof two new sections relating to administrative procedure and review.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 536.010 and 536.100, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 536.010 and 536.100, to read as follows:

536.010. For the purpose of this chapter:

(1) "Affected small business" or "affects small business" means any potential or actual requirement imposed upon a small business or minority small business through a state agency's proposed or adopted rule that will cause direct and significant economic burden upon a small business or minority small business, or that is directly related to the formation, operation, or expansion of a small business;

(2) "Agency" means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases, except those in the legislative or judicial branches;

(3) "Board" means the small business regulatory fairness board, **except when the word is used in section 536.100;**

(4) "Contested case" means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

(5) The term "decision" includes decisions and orders whether negative or affirmative in form;

(6) "Rule" means each agency statement of general applicability that

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 implements, interprets, or prescribes law or policy, or that describes the
20 organization, procedure, or practice requirements of any agency. The term
21 includes the amendment or repeal of an existing rule, but does not include:

22 (a) A statement concerning only the internal management of an agency
23 and which does not substantially affect the legal rights of, or procedures available
24 to, the public or any segment thereof;

25 (b) A declaratory ruling issued pursuant to section 536.050, or an
26 interpretation issued by an agency with respect to a specific set of facts and
27 intended to apply only to that specific set of facts;

28 (c) An intergovernmental, interagency, or intraagency memorandum,
29 directive, manual or other communication which does not substantially affect the
30 legal rights of, or procedures available to, the public or any segment thereof;

31 (d) A determination, decision, or order in a contested case;

32 (e) An opinion of the attorney general;

33 (f) Those portions of staff manuals, instructions or other statements
34 issued by an agency which set forth criteria or guidelines to be used by its staff
35 in auditing, in making inspections, in settling commercial disputes or negotiating
36 commercial arrangements, or in the selection or handling of cases, such as
37 operational tactics or allowable tolerances or criteria for the defense, prosecution,
38 or settlement of cases, when the disclosure of such statements would enable law
39 violators to avoid detection, facilitate disregard of requirements imposed by law,
40 or give a clearly improper advantage to persons who are in an adverse position
41 to the state;

42 (g) A specification of the prices to be charged for goods or services sold by
43 an agency as distinguished from a license fee, or other fees;

44 (h) A statement concerning only the physical servicing, maintenance or
45 care of publicly owned or operated facilities or property;

46 (i) A statement relating to the use of a particular publicly owned or
47 operated facility or property, the substance of which is indicated to the public by
48 means of signs or signals;

49 (j) A decision by an agency not to exercise a discretionary power;

50 (k) A statement concerning only inmates of an institution under the
51 control of the department of corrections and human resources or the division of
52 youth services, students enrolled in an educational institution, or clients of a
53 health care facility, when issued by such an agency;

54 (l) Statements or requirements establishing the conditions under which

55 persons may participate in exhibitions, fairs or similar activities, managed by the
56 state or an agency of the state;

57 (m) Income tax or sales forms, returns and instruction booklets prepared
58 by the state department of revenue for distribution to taxpayers for use in
59 preparing tax returns;

60 (7) "Small business" means a for-profit enterprise consisting of fewer than
61 one hundred full- or part-time employees;

62 (8) "State agency" means each board, commission, department, officer or
63 other administrative office or unit of the state other than the general assembly,
64 the courts, the governor, or a political subdivision of the state, existing under the
65 constitution or statute, and authorized by the constitution or statute to make
66 rules or to adjudicate contested cases.

536.100. Any person who has exhausted all administrative remedies
2 provided by law and who is aggrieved by a final decision in a contested case,
3 whether such decision is affirmative or negative in form, shall be entitled to
4 judicial review thereof, as provided in sections 536.100 to 536.140, unless some
5 other provision for judicial review is provided by statute; provided, however, that
6 nothing in this chapter contained shall prevent any person from attacking any
7 void order of an agency at any time or in any manner that would be proper in the
8 absence of this section. If the agency[, other than the administrative hearing
9 commission] or any board, **other than the administrative hearing**
10 **commission**, established to provide independent review of the decisions of a
11 department or division that is authorized to promulgate rules and regulations
12 under this chapter, fails to issue a final decision in a contested case within the
13 earlier of:

14 (1) Sixty days after the conclusion of a hearing on the contested case; or

15 (2) One hundred eighty days after the receipt by the agency of a written
16 request for the issuance of a final decision,

17 then the person shall be considered to have exhausted all administrative
18 remedies and shall be considered to have received a final decision in favor of the
19 agency and shall be entitled to immediate judicial review as provided in sections
20 536.100 to 536.140 or other provision for judicial review provided by statute. **In**
21 **cases, whether contested or not, where the law provides for an**
22 **independent review of an agency's decision by a board other than the**
23 **administrative hearing commission and further provides for a de novo**
24 **review of the board's decision by the circuit court, a party aggrieved**

25 by the agency's decision may, within thirty days after it receives notice
26 of that decision, waive independent review by the board and instead
27 file a petition in the circuit court for the de novo review of the agency's
28 decision. The party filing the petition under this section shall be
29 considered to have exhausted all administrative remedies.

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